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DEPARTMENT OF COMMERCE

International Trade Administration

[C-557-814]

Certain Frozen Warmwater Shrimp from Malaysia: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp from Malaysia. For information on the estimated subsidy rates, *see* the “Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert Date of Publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Christopher Hargett or Kristen Johnson, Office 8, Import Administration, U.S. Department of Commerce, Room CC116, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-4161 or 202-482-4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition of Gulf Shrimp Industries (Petitioner).<sup>1</sup> This investigation covers 23 government programs. The mandatory respondent in

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<sup>1</sup> The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman’s Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott’s Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulac, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood;

this investigation is Kian Huat Aquaculture Sdn. Bhd. (Kian Huat). The Department has also calculated a countervailing duty (CVD) rate for the voluntary respondent, Asia Aquaculture (M) Sdn. Bhd., Star Feedmills (M) Sdn. Bhd., and Charoen Pokphand Foods (Malaysia) Sdn. Bhd., (collectively, the Asia Aquaculture Companies).

### Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

### Case History

The events that have occurred since the Department published the *Preliminary Determination* on June 4, 2013,<sup>2</sup> are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Certain Frozen Warmwater Shrimp from Malaysia” (Decision Memorandum), which is hereby adopted by this notice.<sup>3</sup>

### Scope Comments

On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.<sup>4</sup> We have addressed this request and comments thereon in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia,

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Tidelands Seafood Co., Inc.; Tommy’s Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood’s Fisheries; Mariah Jade Shrimp Company, LLC; David Chauvin’s Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

<sup>2</sup> See *Certain Frozen Warmwater Shrimp From Malaysia: Preliminary Countervailing Duty Determination*, 78 FR 33345 (June 4, 2013) (*Preliminary Determination*).

<sup>3</sup> Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

<sup>4</sup> See Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Malaysia (C-557-814) – Request for Scope Clarification” (March 28, 2013).

People's Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp” (Scope Memorandum), which is hereby adopted by this notice.

#### Scope of the Investigation

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with this notice. A list of subsidy programs and the issues that parties have raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix II.

The Decision and Scope Memoranda are public documents and are on file electronically via IA ACCESS. IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the CRU, room 7046 of the main Department of Commerce building. In addition, complete versions of the Decision and Scope Memoranda can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and the electronic versions of these memoranda are identical in content.

#### Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we continue to apply adverse facts available (AFA) to Kian Huat in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). A full discussion of our decision to rely on AFA is presented in the Decision Memorandum under the section “Use of Facts Otherwise Available and Adverse Inferences.”

#### Suspension of Liquidation

In accordance with section 705(c)(1)(B)(ii) of the Act, we have calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. If the rates established for all exporters and producers individually investigated are zero, *de minimis*, or determined entirely under facts available, the Department may use any reasonable method to establish an all-others rate.<sup>5</sup> Kian Huat’s rate was determined entirely under facts available with an adverse inference. The Asia Aquaculture Companies, the only entity that participated in the investigation, is a voluntary respondent. We exclude net subsidy rates calculated for voluntary respondents from the calculation of the all others rate.<sup>6</sup> Thus, in accordance with section 705(c)(5)(A)(ii) of the Act and 19 CFR 351.204(d)(3), we are applying as the all others rate the rate calculated for Kian Huat, the non-cooperative mandatory respondent.

We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Ad Valorem Rate
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<sup>5</sup> See section 705(c)(5)(A)(ii) of the Act.

<sup>6</sup> See 19 CFR 351.204(d)(3); and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27310 (May 19, 1997).

Asia Aquaculture (M) Sdn. Bhd. (Asia Aquaculture), Star Feedmills (M) Sdn. Bhd. (Star Feedmills), and Charoen Pokphand Foods (Malaysia) Sdn. Bhd. (CPFM), (collectively, the Asia Aquaculture Companies)	10.80 percent
Kian Huat Aquaculture Sdn. Bhd. (Kian Huat)	54.50 percent
All Others	54.50 percent

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of certain frozen warmwater shrimp from Malaysia that were entered, or withdrawn from warehouse, for consumption on or after June 4, 2013, the date of publication of the *Preliminary Determination* in the *Federal Register*.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order under section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

August 12, 2013\_  
Date

## APPENDIX I

### **Scope of the Investigation**

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>7</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

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<sup>7</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.



## APPENDIX II

### **List of Subsidy Programs and Issues in the Decision Memorandum**

#### **A. Programs Determined To Be Countervailable**

1. Pioneer Status
2. Provision of Grants under the Economic Transformation Program (ETP) – Replicating Integrated Aquaculture Model (IZAQs)
3. Reinvestment Allowance

#### **B. Program Determined To Be Not Countervailable**

1. Human Resource Development Fund

#### **C. Programs Determined To Not Exist**

1. Provision of Leases and Land for Less Than Adequate Remuneration (LTAR) under the ETP – IZAQs
2. Provision of Infrastructure Under Entry Point Project #6

#### **D. Program Determined To Be Terminated**

1. 100% Allowance on Capital Expenditure for Approved Agricultural Projects

#### **E. Programs Determined To Be Not Used**

1. Investment Tax Allowance
2. Infrastructure Allowance
3. Accelerated Capital Allowance
4. Tax Incentives for Approved Food Production Activities
5. Double Deduction for the Promotion of Exports
6. Export Credit Refinancing Program
7. Supplier Credit Facility
8. Buyer Credit Facility
9. Double Deductions for Export Credit Insurance Premiums
10. Tax Exemptions for Exporters in Free Trade Zones
11. Duty Exemptions for Exporters in Free Trade Zones
12. Provision of Seed and Fry for LTAR
13. Loans Under the Fund for Food Program
14. Loans Under the Agriculture Entrepreneurs Scheme for Graduates

Comment 1: Whether the Pioneer Status Program is Specific as an Export Subsidy

Comment 2: Whether the Pioneer Status Program is Specific Because It Is Limited to a Particular Industry or Enterprise

- Comment 3: Whether 19 CFR 351.526 Applies with Regard to Asia Aquaculture Companies' Use of the Pioneer Status Program
- Comment 4: Manner in Which the Department Should Calculate the Benefit Under the Pioneer Status Program
- Comment 5: Whether the Department Should Apply AFA with Respect to Asia Aquaculture's Use of the Reinvestment Allowance
- Comment 6: Treatment of Subsidy Programs Discovered at Verification
- Comment 7: Rely on Government of Malaysia's Response for Kian Huat
- Comment 8: Calculation of Rate Based Upon Adverse Inferences
- Comment 9: Appropriate Rate to Apply as AFA

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